

ADMINISTRATIVE — INTERNAL USE ONLY

DD/HAS

74-0931

Registry

Legal

13 MAR 1974

MEMORANDUM FOR: Legislative Counsel

ATTENTION : Mr.

SUBJECT : H.R. 12206, A Bill to Amend 5 USC 552
(The Freedom of Information Act)

REFERENCE : OLC 74-0249 dtd 20 February 1974

1. Pursuant to your request, we have reviewed the reference Bill, introduced by Representative Koch, which would amend the Freedom of Information Act by requiring that individuals be apprised of records concerning them that are maintained by Government agencies and would further grant certain rights of access to the records. We feel that several provisions of the Bill could create extremely serious difficulties for this Office should it be favorably acted upon by the Congress in its present form.

2. Some question exists as to whether provisions of the existing Freedom of Information Act, notwithstanding the amendments to be added by H.R. 12206, would continue to provide the Agency with exemptions in regard to the Office of Security's personnel security investigative files. If the proposed legislation should become law and is interpreted as not granting exception to the Agency, the following problems would be posed to this Office:

a. Subsection (a) (1) (A) would appear to require every Government agency to notify the subject of a file each time it provided information from the file to another agency or to any person not employed by the agency maintaining the file. This would impact heavily on the Office of Security's Outside Agency Name Check (OANC) program and could

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well result in the termination of this liaison service because of the administrative burden entailed. Our ability to conduct checks at other Federal agencies would, presumably, be similarly limited. The potential collapse of the entire U. S. Government National Agency Check program would result in needless and expensive duplication of investigative effort, as well as giving rise to the likelihood that pertinent security information of record with one agency might remain unknown to other agencies having valid interests.

c. Subsection (a) (6) would permit any individual who is the subject of a file maintained by a Government agency (other than such types of files as are specifically exempted) to request the removal of erroneous information of any kind and would require the agency maintaining the file to notify all other agencies and persons to whom the erroneous material had been transferred of its removal. This provision fails to specify how a determination would be made as to what constituted "erroneous information" or who would make the final judgment. Furthermore, given the subjective nature of much of the testimony of references and informants interviewed during personnel security investigations, interminable challenges could be forthcoming from subjects of files who disagreed with opinions expressed about themselves by others. This provision could, indeed, create great mischief.

d. Subsection (c) appears to have a typographical error, or may refer to provisions of other bills currently pending in the Congress which would also amend the Freedom of Information Act. It makes reference to clauses (1) and (2) of subsection (d); however, subsection (d) of this Bill itself contains only one clause

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which is not germane to the substance of subsection (c). If it can be assumed that the intended reference was to clauses (1) and (2) of subsection (b), then the indicated requirement that the President annually report to the Congress on an agency-by-agency basis the number of records and files exempted by reason of clauses (1) and (2) could require the compilation of a rather extensive report by the Office of Security and the diversion of increasingly limited manpower to continuing record-keeping functions.

e. Subsection (d) grants agencies the authority to withhold disclosure of the names of individuals; i.e., informants, who furnished information contained in any record, subject to the provisions of this amendment. Should the Office of Security's files not be considered exempted, then it would become necessary to have all identifying data pertaining to informants removed from investigative reports prior to making them available for review. This would be no simple task even if it entailed only the excising of names and addresses; unfortunately, numerous other references in reports to specific incidents and relationships would tend to readily identify the source of the information. Thus, an editing job of considerable proportion would escalate to one of staggering dimensions. If the confidentiality of field interviews cannot be maintained, the ability of Office of Security investigators to obtain pertinent, forthright, and comprehensive testimony from informants would be rapidly undermined.

3. If this Bill is passed as written and it is ruled that the Agency is not exempt from compliance, we feel it would have very serious implications for our investigative

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and personnel security program and procedures. Accordingly, it is strongly recommended that an opinion be obtained from the Office of General Counsel, and, if that office finds that the Office of Security would not be exempt from compliance, your office take whatever action is feasible to secure a specific exemption for the Agency. We would appreciate being kept informed of developments in regard to this piece of legislation.

4. Please advise if we can be of further assistance in this matter.

/s/ John F. Blake

John F. Blake
Acting Director of Security

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DD/M&S Registry
File Legal

Director of Security
4E 60 Hqs

The DD/M&S would appreciate receiving a drop copy of your response to the Office of Legislative Counsel memo of 20 February 1974 on H.R. 12206.

Suspense: 15 March 1974.

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LJD

Att: DD/M&S 74-0642

Executive Officer to the DD/M&S
7D 26 Hqs

26 Feb 74

EO-DD/M&S: k-g (26 Feb 74)

Distribution:

- Orig RS = Adse w/Ocy of Att & encl ←
1 - DD/M&S Subject w/Xcy of Att w/o encl
1 - DD/M&S Chrono

DD/M&S 74-0642: Memo dtd 20 Feb 74 to OS fr Ass't LC, subj: H.R. 12206, "To amend title 5, United States Code, to provide that persons be apprised of records concerning them which are maintained by Government agencies."

OLC 74-0249

20 February 1974

MEMORANDUM FOR: Office of Security

SUBJECT : H. R. 12206, "To amend title 5, United States Code, to provide that persons be apprised of records concerning them which are maintained by Government agencies."

1. Hearings have begun on the subject bill and there are indications that it will be favorably reported out of committee.

2. It is requested that you review the bill to determine if the Agency is affected. Note that section (b) does exempt those records classified under an Executive Order; however, section (c) requires an annual report to Congress on an agency-by-agency basis on the number of records exempted by Executive Order.

3. Based on your comments, we will consider if Agency action is necessary.



Assistant Legislative Counsel

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Attachment: H. R. 12206

Distribution: DDI

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93D CONGRESS
2D SESSION

H. R. 12206

IN THE HOUSE OF REPRESENTATIVES

JANUARY 22, 1974

Mr. KOCH introduced the following bill; which was referred to the Committee on Government Operations

A BILL

To amend title 5, United States Code, to provide that persons be apprised of records concerning them which are maintained by Government agencies.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That (a) title 5, United States Code, is amended by adding
4 immediately after section 552 thereof the following new
5 section:

6 “§ 552a. Individual records

7 “(a) Each agency that maintains records, including
8 computer records, concerning any person which may be
9 retrieved by reference to, or are indexed under such per-
10 son's name, or some other similar identifying number or

1 symbol, and which contain any information obtained from
2 any source other than such person shall, with respect to
3 such records—

4 “(1) refrain from disclosing the record or any in-
5 formation contained therein to any other agency or to
6 any person not employed by the agency maintaining
7 such record, except—

8 “(A) with notification of the person concerned
9 or, in the event such person, if an individual, can-
10 not be located or communicated with after reason-
11 able effort, with notification of members of the
12 individual's immediate family or guardian, or, only
13 in the event that such individual, members of the
14 individual's immediate family, and guardian cannot
15 be located or communicated with after reasonable
16 effort, upon good cause for such disclosure, or

17 “(B) that if disclosure of such record is re-
18 quired under section 552 of this chapter or by any
19 other provision of law, the person concerned shall
20 be notified by mail at his last known address of any
21 such required disclosure;

22 “(2) refrain from disclosing the record or any infor-
23 mation contained therein to individuals within that
24 formation contained therein to individuals within that

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1 amine such record or information for the execution of
2 their jobs;

3 “(3) maintain an accurate record of the names and
4 addresses of all persons to whom any information con-
5 tained in such records is divulged and the purposes for
6 which such divulgence was made;

7 “(4) permit any person to inspect his own record
8 and have copies thereof made at his expense, which in
9 no event shall be greater than the cost to the agency of
10 making such copies;

11 “(5) permit any person to supplement the in-
12 formation contained in his record by the addition of any
13 document or writing of reasonable length containing in-
14 formation such person deems pertinent to his record; and

15 “(6) remove erroneous information of any kind, and
16 notify all agencies and persons to whom the erroneous
17 material has been previously transferred of its removal.

18 “(b) This section shall not apply to records that are—

19 “(1) specifically required by Executive order to
20 be kept secret in the interest of the national defense and
21 foreign policy;

22 “(2) investigatory files compiled for law enforce-
23 ment purposes, except to the extent that such records
24 have been maintained for a longer period than reason-

1 ably necessary to commence prosecution or other action
2 or to the extent available by law to a party other than
3 an agency.

4 “(c) The President shall report to Congress before
5 January 30 of each year on an agency-by-agency basis the
6 number of records and the number of investigatory files
7 which were exempted from the application of this section
8 by reason of clauses (1) and (2) of subsection (d) during
9 the immediately preceding calendar year.

10 “(d) This section shall not be held or considered to
11 permit the disclosure of the identity of any person who has
12 furnished information contained in any record subject to
13 this section.

14 “(e) Each agency that maintains records subject to the
15 provisions of this section shall publish rules establishing rea-
16 sonable times, places, fees to the extent authorized, and pro-
17 cedures to be followed with respect to making records
18 promptly available to an individual and otherwise to imple-
19 ment the provisions of section 552a of title 5 of the United
20 States Code.

21 “(f) Any employee of the United States who under the
22 color of agency authority knowingly and willfully violates a
23 provision of this section, or permits such a violation, shall be
24 fined \$1,000.

1 “(g) Nothing in this section shall be construed to per-
2 mit transfer or similar distribution of any information deemed
3 confidential by other statutes.”.

4 (b) The table of sections of chapter 5 of title 5, United
5 States Code, is amended by inserting:

 “552a. Individual records.”

6 immediately below:

 “552. Public information; agency rules; opinions, orders, records, and
 proceedings.”.

7 SEC. 2. The amendments made by this Act shall be-
8 come effective on the ninetieth day following the date of
9 enactment of this Act.

92ND CONGRESS
2ND SESSION

H. R. 12206

A BILL

To amend title 5, United States Code, to provide that persons be apprised of records concerning them which are maintained by Government agencies.

By Mr. KOCH

JANUARY 22, 1974

Referred to the Committee on Government Operations